

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

---

In Re:

Chapter 7 Case

Randall L. Kollodge and  
Diane M. Kollodge,

ADV 04-5034(RJK)  
BKY 04-50507 (RJK)

Debtors,

Jeannie M. Kollodge,

Plaintiff,

vs.

Randall L. Kollodge,

Defendant.

---

**NOTICE OF HEARING AND MOTION OF THOMAS F. MILLER AND THOMAS F.  
MILLER, P.A. FOR LEAVE TO WITHDRAW AS COUNSEL TO PLAINTIFF**

To: The Debtor and other entities specified in Local Rule 9013-3:

1. Thomas F. Miller and Thomas F. Miller, P.A. ("Movants"), counsel of record to Jeannie M. Kollodge, Plaintiff in this adversary proceeding move the Court for the relief requested below and give notice of hearing.
2. The Court will hold a hearing on this Motion at 10:30 o'clock A.M. on October 25, 2004, in Courtroom Number 2, Fourth Floor, United States Courthouse, at 515 West First Street, Duluth, Minnesota.
3. Any response to this Motion must be filed and delivered not later than October 20, 2004, which is three days before the time set for hearing (exclusive of Saturday and Sunday), or filed and served by mail not later than October 16, 2004, which is seven days before the time set for the hearing (exclusive of Saturday and Sunday.) **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. § § 157 and 1334, Fed.R.Bankr.P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this chapter 7 case was filed April 28, 2004. The case is now pending in this Court. This adversary proceeding was commenced on July 26, 2004.

5. This motion arises under 11 U.S.C. § 105. This motion is filed under Fed.R.Bankr.P. 9014 and Local Rules 9013-1 *et seq.*, and Local Rule 9010-3(e). Movants request relief with respect to being granted leave to withdraw as counsel of record to the Plaintiff.
6. The Plaintiff has, since shortly after the commencement of this adversary proceeding, failed to communicate meaningfully with Movants. She has failed to appear at scheduled conferences. She has not fulfilled her promises to procure and deliver evidence required for discovery and for trial. She has not responded to numerous telephone messages and several letters requesting her response and cooperation.
7. Further, Plaintiff has completely ignored her agreement to pay Movants' fees and costs. She has made no payments whatsoever, notwithstanding her agreement to a minimum payment schedule in her engagement agreement with Movants. Said agreement provides in part: "Failure to comply with this payment agreement shall constitute grounds for withdrawal."
8. Plaintiff's failure to cooperate renders it impossible to comply with the Order for Trial, which requires stipulations and evidence lists by October 15, and trial on October 25.
9. For these reasons, as well as general considerations of professional responsibility, the Movants have determined that they cannot provide further representation to the Plaintiff in this adversary proceeding. Movants bring this motion seeking the Order of the Court allowing them to withdraw as counsel of record, as required by Local Rule 9010-3(e)(2).

WHEREFORE, Movants pray that the Court make its Order accordingly.

Dated: October 3, 2004

**THOMAS F. MILLER, P.A.**

BY /E/ THOMAS F. MILLER  
Thomas F. Miller, Lic. No. 73477  
130 Lake Street West  
Wayzata, MN 55491  
Tel.: (952) 404-3896  
Fax: (952) 404-3893  
Email: Thomas@Millerlaw.com

#### **VERIFICATION**

Thomas F. Miller, an attorney at law licensed to practice before this Court, and the principal of Thomas F. Miller, P.A., states under penalty of perjury that the facts set forth in the within Motion are true and correct to the best of his knowledge, information, and belief.

Dated: October 3, 2004

**/E/ THOMAS F. MILLER**  
Thomas F. Miller

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Chapter 7 Case

Randall L. Kollodge and  
Diane M. Kollodge,

ADV 04-5034(RJK)  
BKY 04-50507 (RJK)

Debtors,

Jeannie M. Kollodge,

Plaintiff,

vs.

Randall L. Kollodge,

Defendant.

---

**MEMORANDUM IN SUPPORT OF MOTION OF  
PLAINTIFF'S COUNSEL FOR LEAVE TO WITHDRAW**

Thomas F. Miller and the law firm of Thomas F. Miller, P.A., which are presently counsel of record to the Plaintiff in this adversary proceeding, move the Court for leave to withdraw as counsel to the Plaintiff.

The Local Rules of this Court require that counsel in an adversary proceeding seek leave of the Court to withdraw, if there has been no substitution. Local Rule 9010-3(e)(2). That requirement is amplified into an ethical mandate by Rule 1.16, Minnesota Rules of Professional Conduct, which in turn are binding upon attorneys admitted before this Court (as a Unit of the District Court) under Rule 83.6(d)(2), Local Rules of the United States District Court for the District of Minnesota. The particular provisions of the Rules of Professional Conduct which authorize or mandate withdrawal in this situation are Rules 1.16(a)(3) ("the lawyer is discharged") and 1.16(b)(4) ("the representation has been rendered unreasonably difficult by the client").

Accordingly, the Court should grant the Motion.

Respectfully Submitted,

Dated: October 3, 2004

**THOMAS F. MILLER, P.A.**

BY /E/ THOMAS F. MILLER  
Thomas F. Miller, Lic. No. 73477  
130 Lake Street West  
Wayzata, MN 55491  
Tel.: (952) 404-3896  
Fax: (952) 404-3893

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

---

In Re:

Chapter 7 Case

Randall L. Kollodge and  
Diane M. Kollodge,

ADV 04-5034(RJK)  
BKY 04-50507 (RJK)

Debtors,

Jeannie M. Kollodge,

Plaintiff,

vs.

Randall L. Kollodge,

Defendant.

---

**ORDER GRANTING MOTION OF PLAINTIFF'S COUNSEL  
FOR LEAVE TO WITHDRAW**

At Duluth, Minnesota this \_\_\_\_\_ day of October, 2004.

This matter came on for hearing before the undersigned Judge of the above Court on October 25, 2004 upon the Notice of Hearing and Motion of Thomas F. Miller and Thomas F. Miller, P.A., for Leave to Withdraw as Counsel to Plaintiff. Appearances were as noted in the record of this Court.

Upon the advice and arguments of counsel, and upon all of the files, records, and proceedings herein,

**IT IS HEREBY ORDERED:**

1) That the aforesaid Motion is granted, and Thomas F. Miller, and the law firm of Thomas F. Miller, P.A. are hereby allowed to withdraw as counsel of record to the Plaintiff in this adversary proceeding.

2) That no further act shall be required to effectuate this withdrawal.

**BY THE COURT:**

---

Robert J. Kressel  
United States Bankruptcy Judge

**UNSWORN DECLARATION FOR PROOF OF SERVICE**

I, the undersigned Thomas F. Miller, hereby declare under penalty of perjury that on October 3, 2004, I served the within Notice of Hearing and Motion of Thomas F. Miller and Thomas F. Miller, P.A. for Leave to Withdraw as Counsel to Plaintiff, Memorandum in Support of Motion of Plaintiff's Counsel for Leave to Withdraw, proposed Order Granting Motion of Plaintiff's Counsel for Leave to Withdraw, and this unsworn declaration, upon the following, by sending copies thereof by first class mail, postage prepaid, to them at the following addresses:

Office of the United States Trustee  
1015 United States Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Doraine A. Larison, Trustee  
1010 W. St. Germain  
Suite 600  
St. Cloud, MN 56301

Ms. Jean Kollodge  
P.O. Box 9372  
N. St. Paul, MN 55109

Randall L. Kollodge  
1020 Fir  
Brainerd, MN 56401

Richard A. Ohlsen  
417 Laurel St.  
P.O. Box 366  
Brainerd, MN 56401

Brainerd Savings & Loan  
C/o Stewart, Zlimen & Jungers  
430 Oak Grove Street, No. 200  
Minneapolis, MN 55403

Dated: October 3, 2004

**/e/ Thomas F. Miller**  
Thomas F. Miller, Lic. 73477